

State Bar/Emeritus Pro Bono Rules

Mississippi Adopts Emeritus Pro Bono Attorney Rule, Bill

On October 15, 2007, the Supreme Court of Mississippi adopted an amendment to Rule 46 of the Mississippi Rules of Appellate Procedure to include a provision for pro bono publicus attorneys. A pro bono publicus attorney is (a) an inactive member of the Mississippi Bar who is not otherwise engaged in the practice of law; or (b) an attorney licensed in a state other than Mississippi who will provide free legal services under the supervision of a qualified legal services provider and neither asks for nor receives personal compensation of any kind for the legal services rendered. A qualified legal services provider is a not-for-profit legal aid organization that is approved by the Mississippi Bar. An attorney who complies with the rule permitting practice as a pro bono publicus attorney shall not be deemed to be engaged in the unauthorized practice of law in Mississippi. The purpose of Rule 46(f) is to permit and encourage attorneys who do not engage in the active practice of law in Mississippi to provide legal representation to persons who cannot afford private legal services ([see http://www.mssc.state.ms.us/Images/Opinions/143112.pdf](http://www.mssc.state.ms.us/Images/Opinions/143112.pdf)).

For more information on how your state can develop and implement state emeritus *pro bono* attorney rules, contact Holly Robinson at robinsoh@staff.abanet.org.

Alaska has rolled out its new emeritus attorney practice rule with grand fanfare! The October 15, 2007, effective date has already resulted in 12 new volunteers, including members practicing outside of Alaska.

Through an outreach campaign that involved an article published in the *Alaska Bar Rag*, a letter from the Chief Justice of the Alaska Supreme Court, and a personal follow-up to potential volunteers, the Alaska Bar Association and its partner legal services providers are delighted with the results thus far.

—Krista Scully
Pro Bono Director, Alaska Bar Association

Fair Housing

Securing Residents' Rights: A Survey of Assisted Living Facility Laws' Incorporation of Provisions Of the Fair Housing Act

By Matthew Bernt

Assisted living residents, their families, providers, and advocates for long-term care services are aware that states regulate assisted living facilities. They know to look to their state's statutes and administrative rules regulating assisted living for information on residents' rights and protections. Generally speaking, this system works well for informing residents, providers, and advocates about the rights and protections provided to assisted living residents by state law.

Continued on page 8

Matthew Bernt is the 2007 Nancy Coleman Intern at the *ABA Commission on Law and Aging* and a third-year law student at the Catholic University of America Columbus School of Law in Washington. He works as a staff member for the Catholic University Law Review.

Inside

ABA Sponsors Mock Social Security Disability Hearing at the U.S. Capitol	2
Meet the New ABA Commissioners	3
Checklist for Emeritus Pro Bono Programs	5
Lawyerly Conceits: <i>Nature Walk</i> , a poem by Jared Wilson and Victoria Babish	7
Nat'l Healthcare Decisions Day Set for April 16	8
Deanna Clingan-Fischer Wins National Aging & Law Award, NALC 2007 Highlights	19
Audiotapes and Podcasts from NALC Coming Soon!	20

Pictured from left to right:
Rudolph N. Patterson,
 Commissioner, **ABA
 Commission on Law and
 Aging**, and private practitioner,
 Georgia; **Holly Robinson**,
 associate staff director of the
**ABA Commission on Law
 and Aging**; Tela L. Gatewood,
 U.S. Administrative Law
 Judge, Oklahoma; Jodi B.
 Levine, U.S. Administrative
 Law Judge, Oklahoma; and
 Peter M. Keltch, U.S.
 Administrative Law Judge,
 Oklahoma.



BIFOCAL

BAR ASSOCIATIONS IN FOCUS ON AGING AND THE LAW
 JOURNAL OF THE AMERICAN BAR ASSOCIATION
 COMMISSION ON LAW AND AGING

Commissioners

Joseph D. O'Connor, Chair
 Betsy J. Abramson
 James F. Carr
 John J. Copelan Jr.
 Arthur R. Derse
 Robert B. Friedland
 Sarah Lenz Lock
 Jennifer Moye
 Rudolph N. Patterson
 Karen J. Sarjeant
 Nancy G. Shor
 Ann Soden
 Barbara A. Soniat
 Hon. Sandra Thompson
 Linda S. Whitton

Board of Governors Liaison

Larry McDevitt

Commission Staff

Charles P. Sabatino, Director
 Erica F. Wood, Assistant
 Director
 Lori A. Stiegel
 Leslie B. Fried
 Holly Robinson
 Ellen VanCleave Klem
 Jamie Philpotts
 Sonia Arce
 Trisha Bullock

Editor

Jamie Philpotts

BIFOCAL, ISSN 0888-1537, is published bi-monthly (six times a year) by the ABA Commission on Law and Aging, 740 15th St., N.W., Washington, DC 20005. The views or opinions expressed herein do not necessarily represent the policies of the American Bar Association unless specifically adopted as such. Questions? Contact the Commission at (202) 662-8690, or see our Web page at: www.abanet.org/aging. © 2007 American Bar Association.

Social Security/Inside the ABA

On September 6, 2007, the ABA sponsored a mock **Social Security Disability Hearing at the U.S. Capitol**. The program was designed to educate Congressional staff and members of Congress about the practical side of Social Security disability law and to give attendees the opportunity to observe what happens at Social Security disability hearings, which are generally closed to the public. Thirty-two people attended, including Congressional and committee staff.

The volunteer cast of administrative law judges and experienced claimants' representatives included Tela L. Gatewood, U.S. Administrative Law Judge, Oklahoma; Peter M. Keltch, U.S. Administrative Law Judge, Oklahoma; Jodi B. Levine, U.S. Administrative Law Judge, Oklahoma; **Rudolph N. Patterson, ABA Commission on Law and Aging Commissioner and private practitioner, Georgia**; and **Holly Robinson, associate staff director of the ABA Commission on Law and Aging**. The program was co-sponsored by the following ABA entities: **Commission on Law and Aging**, General Practice, Solo and Small Firm Division, National Conference of the Administrative Law Judiciary, Section of Administrative Law and Regulatory Practice, Section of Health Law, Section of Individual Rights and Responsibilities, Section of Tort Trial and Insurance Practice, and the Senior Lawyers Division.

The backlog of pending Social Security disability cases continues to get a significant amount of press attention.

Inside the Commission

New Commissioners for 2007

The **ABA Commission on Law and Aging** is composed of fifteen members who are appointed on an annual basis by the president of the American Bar Association. As a multi-disciplinary group, the commissioners represent aging experts from a broad spectrum of professions, including law, health care, social work, gerontology, advocacy, and public service. The fundamental diversity of the group ensures a stimulating forum for discussion of the law-related issues facing older Americans. Cooperative efforts between the commissioners and the commission staff have produced numerous publications, as well as research and demonstration projects of considerable value to the public at large. To provide our readers with an abbreviated view into the strengths and expertise of our commission, each fall issue of *BIFOCAL* will feature brief profiles of the most recent distinguished appointees.

Dr. Arthur R. Derse is director of medical and legal affairs and associate director of the Center for the Study of Bioethics



at the Medical College of Wisconsin, where he is professor of bioethics and emergency medicine. Dr. Derse serves as chair of the National Ethics Committee of the Veterans Health Administration, chair of the ethics committee of the American College of Emergency Physicians, and senior consultant for academic affairs at the American

Medical Association's Institute for Ethics. He is a past president of the American Society for Bioethics and Humanities. His educational activities include development and direction of the medical ethics and palliative care course in the medical school and several bioethics graduate school courses that encompass law and bioethics.

Sarah Lenz Lock is the director of policy integration of AARP's policy and strategy group. She joined AARP in 1997 to conduct health care impact litigation on behalf of older persons, working on issues related to Medicare, Medicaid,

managed care, long-term care, and prescription drugs. Ms. Lock has authored numerous amicus briefs for AARP on health care issues. Prior to joining AARP, Ms. Lock served as a trial attorney for the U.S. Department of Justice, handling complex litigation against federal agencies and assisting in policy development. She also taught at the Attorney General's Advocacy Institute for Civil Trial Advocacy.

Rudolph N. Patterson is managing partner of the law firm of Westmoreland, Patterson, Moseley & Hinson, LLP, in



Macon, Georgia. His practice areas of expertise include Social Security disability, personal injury, and workers' compensation. Mr. Patterson has been a member of the ABA since 1963 and has served in a variety of capacities, including as secretary to the Administrative Law Section and as a member of the House of Delegates for five years.

Outside of the ABA, he is active in numerous professional associations, including the

Continued on page 4

Join the ABA today and become part of the most prestigious legal organization in the country!

- Stay on top of the latest developments in the law and the legal community;
- Gain access to leadership and networking opportunities;
- Select from more than 30 specialty sections, divisions, and forums, and over 600 ABA listserves; and
- Take advantage of valuable discounts on the products and resources you need.

Don't delay! Join the ABA today at <http://www.abanet.org/join/>

New Commissioners

Continued from page 3

State Bar of Georgia (president, 1999-2000; secretary, 1996-1998; board of governors, 1991-2001; executive committee, 1992-2001; General Practice and Trial Section, chair, 1985-1987); and the Macon Bar Association (president, 1967-present); among many others. Mr. Patterson is a co-founder of the National Organization of Social Security Representatives, serving as president from 1981-1983, and as a member of the executive committee from 1979-present.

Linda S. Whitton is a professor of law at Valparaiso University in Indiana. Prior to her career as an academic, she



practiced business transactional law, including commercial real estate, in Indianapolis. Within the ABA, professor Whitton has been active in the Section of Real Property, Probate and Trust Law, with a particular emphasis on elder law. She has served in various committee leadership positions in the section's elder law and disability planning group, and currently is the supervisory council member for that

group. Professor Whitton also initiated the section's National Healthcare Decisions Week campaign, which facilitates community education about planning for end-of-life health care

decisions by providing program materials and grant support to state and local bar associations. She serves as the reporter for the Committee to Revise the Uniform Durable Power of Attorney Act.

Kathleen Wilbur is the University of Southern California Mary Pickford Foundation Professor of Gerontology and



Professor of Health Services Administration. She has published extensively in the field of aging, authoring more than 75 articles and book chapters on elder abuse, conservatorship and guardianship, and health and long-term care. Professor Wilbur is a fellow in the Gerontological Society of America and the recipient of a faculty fellowship from the John Randolph Haynes and

Dora Haynes Foundation. Professor Wilbur serves on the editorial boards of *Aging & Mental Health* and *Home Health Care Services Quarterly*; on the California *Olmstead* Advisory Committee; and on the Medical and Scientific Advisory Council of the Alzheimer's Association. She is the past chair of the Los Angeles County Long-Term Care Coordinating Council; and currently chairs the board of directors of St. Barnabas Senior Services. Professor Wilbur has worked as a consultant with a number of organizations, including: AARP; the Administration on Aging; and the California Department on Aging; among others.

Get Connected to Elderbar the listserve that brings together public sector law and aging advocates and the private bar. Elderbar is for you if you are a:

- ◆ Title IIIB legal services provider or developer;
- ◆ Long-term care ombudsman;
- ◆ Other OAA-funded advocate;
- ◆ Legal Services Corporation, other non-profit, or public sector legal advocate;
- ◆ Law school elder law or clinical staff;
- ◆ Bar association elder law section or committee member or leader, or
- ◆ National law and aging advocate.

Elderbar gives you the opportunity to communicate across the boundaries of the law and aging networks and the public and private sectors. You may share ideas and information about bar section and committee structures and activities, and learn what others are doing in the face of funding shortages and practice restrictions to meet the legal needs of older people. Elderbar is a project of the ABA Commission's National Legal Assistance Support Center. Messages can only be posted and read by members.

**To subscribe, send your name, e-mail address, and professional affiliation to:
RobinsoH@staff.abanet.org.**

Checklist for Creating An Emeritus Attorney Pro Bono Participation Program

By Holly Robinson

The purpose of enacting emeritus attorney pro bono practice rules and establishing an emeritus attorney pro bono participation program is to encourage and provide retiring attorneys, or non-practicing attorneys who have chosen other career paths, who otherwise may choose inactive status or resign from membership in the bar, the opportunity to provide pro bono legal services to low- and moderate-income individuals and vulnerable seniors.

To encourage participation and utilize the legal skills, training, and experience of retiring and non-practicing attorneys in providing pro bono services, the results of a survey conducted in 2006 by the **ABA Commission on Law and Aging** suggest that a state or territorial bar:

- ✿ Adopt practice rules that permit and encourage retiring or otherwise non-practicing attorneys to choose this type of bar membership or status; and
- ✿ Establish a statewide emeritus attorney pro bono participation program that offers attorneys a meaningful opportunity to volunteer their valuable skills to legal services providers, thereby increasing the availability of legal assistance to low- and moderate-income individuals and vulnerable seniors.

Enacting an emeritus attorney pro bono rule is a necessary first step. But equally important is establishing a program to implement the rule, educate retiring and non-practicing attorneys about the option, encourage attorneys to volunteer, and provide support to legal services providers in recruiting and maintaining volunteers.

The establishment of an emeritus attorney pro bono participation program requires consideration of a number of elements and variables. The following list of factors and questions may be helpful in the formulation process.

Holly Robinson is associate staff director of the ABA Commission on Law and Aging. She can be reached at robinsoh@staff.abanet.org or phone (202) 662-8694.

✓ Program Administration

Who will administer the program? Pro bono or program development staff, access to justice staff, or committees of a state bar or bar association may be well-suited to this task.

✓ Rule Administration

Who will receive applications for emeritus pro bono status? Does that entity have the capacity to create and maintain a data base of emeritus pro bono attorneys, either as part of the bar membership data base or a separate data base?

Who will verify elements of a rule that may require verification; *i.e.*, a length of practice requirement, or will an attorney's filing of an affidavit be sufficient?

If out of state attorneys are permitted to provide pro bono services, will there be a different process for their registration?

✓ Attorney Registration Requirements

How often will attorneys be required to register for emeritus attorney pro bono status—once, annually, bi-annually? Will registration be a part of or separate from bar registration requirements?

✓ Legal Services Provider Registration Requirements

How will legal services provider registration be handled? Will providers be required to register once, annually, or bi-annually?

Does the entity receiving applications from providers have the capacity to create and maintain a data base of providers?

What happens after a provider files an application with the named entity?

Is the process administratively onerous or discourage providers from participating?

Continued on page 6

Emeritus Pro Bono Checklist

Continued from page 5

✓ Outreach and Recruitment of Attorneys

Who will be responsible for informing retiring and non-practicing attorneys about the rule and recruiting attorneys to volunteer? What mechanisms are available to do this (e.g., dues statements and other mailings of the bar association)?

✓ Outreach and Recruitment of Legal Services Providers

Who will be responsible for informing legal services providers about the rule and advising them about the availability of volunteers?

✓ Attorney Orientation and Training

What type of orientation and training will be provided to new volunteers? The Washington State Bar Association requires all attorneys interested in changing their status to “emeritus” to participate in a one-time orientation training. The potential new volunteers are welcomed by the president of the Washington State Bar and have an opportunity to meet legal services providers. Attendees at this training receive information about volunteer opportunities available at the various legal services providers, as well as logistical information about changing their bar membership status to emeritus. Attendees are reimbursed for their travel expenses to attend the orientation training. Many organizations that sponsor CLE seminars offer low-cost or free admittance to emeritus attorneys.

Collaborate is a listserv dedicated to providing a forum for the aging, disability, and dispute resolution communities. Sponsored by the ABA Commission on Law and Aging, the listserv includes more 185 mediators, lawyers, long-term care ombudsmen, aging and disability advocates, service providers, and academics. The objective is to promote the use of creative dispute resolution mechanisms in the aging and disability communities.

The listserv is low-key, and offers a useful way to exchange information, updates, and announcements.

To sign up, send an e-mail to ericawood@staff.abanet.org.

✓ Volunteer Recognition

How will the efforts of the emeritus pro bono attorneys, who are participating in the state’s access to justice efforts, be recognized for their contributions?

✓ Program Evaluation and Outcomes

Will the entity responsible for overseeing the implementation of the rule be able to report, on a regular and on-going basis, the number of attorneys providing pro bono services under the rule, the number of legal services providers for whom emeritus pro bono attorneys are volunteering, and the overall impact of the rule in meeting unmet legal need?

Will the entity responsible for overseeing the implementation of the rule be able to identify aspects of the rule that may be barriers to volunteering and recommend changes to the rule?

It is important to remain mindful that the goal of emeritus attorney pro bono participation rules and programs is to encourage retiring and non-practicing attorneys to volunteer to provide pro bono services and to expand access to justice for low- and moderate-income persons and vulnerable seniors. But, 20 years of experience with emeritus attorney pro bono rules has demonstrated that adopting emeritus attorney pro bono rules without establishing an emeritus attorney pro bono participation program to implement the rules is ineffective in meeting the stated goals of the rules; namely, using emeritus attorneys to increase access to civil legal services for low- and moderate-income individuals and vulnerable seniors.

Emeritus attorney pro bono rules are a wonderful way to tap into the invaluable experience and time that retiring and non-practicing attorneys have to offer and can provide a significant avenue to engage attorneys in new or additional pro bono opportunities. Emeritus attorney pro bono participation programs can show them the way.

“It’s a pleasure to have the support of the state bar in making this meaningful contribution”

“I find participation in the program very satisfying.”

—2006 California Emeritus Attorney Survey

Lawyerly Conceits

Making the Stories Of Our Clients and Our Lives Accessible Through Poetry

Lawyers are more than the sum of their academic degrees and professional experiences. Between a demanding work load and a plurality of professional obligations, many lawyers nevertheless have found an outlet in creative writing.

This *BIFOCAL* column showcases the often unseen talents of those who work in the field of law and have found a creative outlet in writing. If you have written a poem or a prose piece, have penned a book or movie review, or simply have an inspired observation on a topic relevant to law or aging, *BIFOCAL* welcomes the opportunity to share your work. For consideration, e-mail Jamie Philpotts at philpotj@staff.abanet.org.

This month, the column diverges to feature a prize-winning poem from the “Sense of Wonder: Rachel Carson Intergenerational Photo, Essay and Poetry Contest.” The poem was co-written by six-year-old Jared Wilson and his 65-year-old great aunt Victoria Babish. The poem won first place in the age eight and under poetry category. The contest was sponsored by the U.S. Environmental Protection Agency, as part of its initiative to protect the environmental health of older persons; Generations United, and the Rachel Carson Council, Inc.

The contest called for joint projects involving a person under age 18 and a person over age 50, and that would “best expresses the sense of wonder that you feel for the sea, the night sky, forests, birds, wildlife, and all that is beautiful to your eyes.”

The author, **Jared Wilson**, is a six-year-old first-grader from Virginia. When Jared was three his mother decided it was time to get rid of the stroller. Thus, Jared learned early on to walk relatively long distances. Nowadays, Jared and his great aunt often take walks that last a couple of hours. Jared likes walking with his great aunt for a number of reasons, not least of which is that she knows the answers when he asks, “What kind of tree is that?” or “What kind of bird is that?”

Victoria Babish, Jared’s great aunt, is 65 years old and enjoys getting outside for walks every day. She especially enjoys walking with Jared “since he notices many small items along the journey.” When not walking with Jared, Ms. Babish volunteers to maintain trails with her local hiking group, reads with first-graders as part of the America Reads program, and, as an AARP tax aide counselor, does taxes for low- and moderate-income people at senior centers.

Reprinted with permission.



Nature Walk

First we saw the stream
Three amazing things we found!
A crayfish, a salamander, and even fungus on a log.
Three plants, too!
Wild roses are the best of them.
May apples are the second.
Large cabbage leaves are very ugly but they are true,
true, true.
Some ticks get stuck on our shirts when we walk in
the woods.
And you may be surprised but I like it when this
happens. It’s amazing!
The only thing I don’t like is when there’s thorns.
They prickle and pick.
I take my walks with my Great Aunt. And sometimes
my Great Uncle, too.
It doesn’t matter whatever we do.
Or where we go.
We just walk, talk, and collect things. Amazing things
from nature!

Securing Fair Housing Rights

Continued from page 1

However, this system does not work well for informing residents, providers, and advocates about the rights and protections provided by federal law. Specifically, important housing anti-discrimination rights and protections based upon disability are provided to assisted living residents under the federal Fair Housing Act.

This paper advocates incorporating the Fair Housing Act's disability mandates into state assisted living statutes and rules as a means of educating residents and their families, providers, and advocates about these important rights and protections. This awareness will increase provider compliance with the disability mandates of the Act, and enable residents, their families, and advocates, to recognize

National Healthcare Decisions Day Set for April 16, 2008

April 16, 2008, will be the inaugural National Healthcare Decisions Day. On this day, throughout the country, healthcare providers, professionals, chaplains, attorneys, and others will participate in a massive effort to highlight the importance of advance healthcare decisionmaking.

To facilitate this process, initiative organizers will provide clear, concise, and consistent information and tools for the public to execute written advance directives (healthcare powers of attorney and/or living wills) in accordance with their applicable state laws. These resources will be available at: www.nationalhealthcaredecisionsday.org.

Although several states have engaged in advance directives awareness events, and numerous organizations have devoted substantial time and money to improving education about advance healthcare planning, only a small minority of Americans have executed an advance directive. National Healthcare Decisions Day seeks to address this issue by focusing attention on advance healthcare planning from a variety of directions simultaneously.

A number of national organizations have already committed to participating in this event by encouraging their members and chapters to engage in various education initiatives. For more information and a list of participating organizations, see on the Web www.nationalhealthcaredecisionsday.org.

discriminatory practices and to protect their housing rights. Being armed with knowledge of the Act's provisions will help assisted living applicants and residents with disabilities enter or remain in the assisted living facility of their choice.

Background

Assisted living facilities are a relatively new housing option for older Americans. They serve as an intermediate option between independent living and nursing facilities.¹ Residents of assisted living facilities generally have difficulty with some activities of daily living, but do not require the level of care provided at a nursing facility. Assisted living facilities allow a resident to maintain a measure of independence, while receiving assistance and health-care at the facility.² Unlike other senior housing options, especially nursing facilities, there is no agreed upon definition or federal regulation of assisted living facilities. This has led to a wide variety of definitions and variations in state regulations.³ For purposes of this paper, assisted living facilities are defined as facilities subject to state licensing requirements that provide long-term housing, support services, and health services to individuals who need assistance with several activities of daily living.⁴

Assisted living facilities are regulated by each individual state rather than by the federal government, which regulates nursing homes. In addition, several federal anti-discrimination laws, including the Americans with Disabilities Act and the Fair Housing Act, apply to assisted living facilities. The Fair Housing Act provides important protections to assisted living residents, which allow them to maintain the confidentiality of their health information, or request reasonable accommodations or modifications that would permit them to move into or remain in a facility. State laws regulating assisted living facilities are often ambiguous or silent regarding the applicability of fair housing laws to assisted living facilities. As a result, residents of those facilities may not recognize situations where they are being subjected to discrimination, may not be aware of their rights under state and federal fair housing laws, and may not understand how state and federal law can help them when they are subjected to housing discrimination. Likewise, facility providers may not realize that fair housing laws apply to their facilities and may not realize when they are engaging in discriminatory behavior. As a result, older Americans may be improperly denied admittance to the facility of their choice, may be improperly evicted from an assisted living facility, or they may be involuntarily forced to move from an assisted living facility to a nursing facility.

This paper looks at the degree to which states have adopted or referenced Fair Housing Act language or requirements in their assisted living statutes and administrative

rules. This paper first examines the history and intent of the federal Fair Housing Act and various state fair housing laws to see what differences exist between them. Next, this paper analyzes the degree to which states have adopted or referenced the federal Fair Housing Act or state Fair Housing Act language in their assisted living statutes and administrative rules. The relevant statutes and administrative rules of all 50 states and the District of Columbia were examined, in addition to any relevant fair housing case law brought against assisted living facilities by an individual with a disability.

Finally, this paper explores the lack of knowledge among older Americans of their fair housing rights and the lack of knowledge of providers of the applicability of fair housing law to their facilities. This paper concludes by suggesting statutory language that would help remedy the lack of awareness of fair housing rights and prohibitions among assisted living residents, providers, and advocates.

This paper's focus with regard to fair housing language is limited to analyzing the prevalence of two important provisions of the Fair Housing Act: the requirement that reasonable accommodations in rules and procedures be provided to individuals with disabilities so that they can fully enjoy residence in an assisted living facility, and the prohibition against inquiring into the existence or nature of a disability of an individual entering an assisted living facility.

Fair Housing Act and Fair Housing Amendments Act

As part of the Civil Rights Act of 1968, Congress passed the Fair Housing Act (FHA). The original Act prohibited discrimination in the sale or rental of housing on the basis of race, color, religion, and national origin.⁵ In 1988 Congress passed the Fair Housing Amendments Act (FHAA), which added persons with disabilities to the list of protected persons⁶ for the purpose of ending the "unnecessary exclusion" of individuals with disabilities and repudiating "the use of stereotypes and ignorance" regarding individuals with disabilities.⁷ The FHAA made it illegal to discriminate on the basis of disability in the sale or rental of housing to an individual with disabilities or an individual or a person associated with the individual with disabilities.⁸ To fall under the protections of the FHA, a person has to have a disability that limits a major life activity, have a record of having a disability limiting major life activities, or be regarded as having such a disability.⁹ Major life activities include "functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working."¹⁰

An important prohibition protecting individuals with disabilities is the prohibition against a property owner's refusal

to make "reasonable accommodations in rules, policies, practices, or services" when such an accommodation is needed by an individual with a disability in order to use and enjoy a residence.¹¹ In order to obtain a reasonable accommodation a resident must request the accommodation, show that the requested accommodation is related to the individual's disability, and show that the accommodation is necessary to provide the resident an equal opportunity to use and enjoy the dwelling of their choice.¹² However, a reasonable accommodation does not have to be made when doing so would impose an undue administrative or financial burden on the property owner or would fundamentally alter the service provided by the property owner.¹³ Examples of reasonable accommodations include the waiver of a no-pet policy to allow a service animal and changing a facility's parking policy to provide a mobility-impaired individual easier access to their unit.¹⁴

A second important prohibition under the FHA is the prohibition against inquiring into the existence or extent of an individual's disability upon application to a dwelling.¹⁵ However, inquiries can be made, provided they are made to all applicants, as to whether an applicant can meet tenancy requirements, whether the applicant qualifies for handicap-only housing, and whether the applicant is involved with the use or distribution of illegal substances.¹⁶

Although the Fair Housing Act is one place that a resident of an assisted living facility can turn to learn about their rights, residents may also look at their state's fair housing laws and, in some cases, to their state's assisted living statutes and administrative rules. The degree to which states have adopted or referenced federal fair housing law into either their own state fair housing laws or assisted living facility laws is examined below, beginning first by looking at the various state fair housing laws, and then by examining various state assisted living facility statutes and administrative rules.

Individual State Fair Housing Laws

Many states have adopted their own fair housing laws that mirror the Fair Housing Act. States have either incorporated fair housing laws into more general civil rights laws or have enacted specific fair housing laws. Twenty states¹⁷ have enacted housing-specific anti-discrimination laws, while 27 states¹⁸ have enacted their fair housing laws within a general civil rights or human rights law. In general, more states have adopted language that includes a failure to make a reasonable accommodation as a form of housing discrimination against an individual with a disability than have adopted language prohibiting inquiries into the nature and extent of an individual's disability. Specifically, 46 states¹⁹ have enacted

Continued on page 10

Securing Fair Housing Rights

Continued from page 9

the requirement that reasonable accommodations be made when requested, while only 17 states²⁰ have enacted the prohibition against inquiring into the existence or extent of one's disability. New Mexico has enacted a fair housing law that does not contain either a requirement to grant reasonable accommodations or a prohibition against inquiring into the nature or extent of an individual's disability.²¹

Idaho, Mississippi, and Wyoming have not yet enacted state fair housing laws.

The analysis of state fair housing laws is examined in two parts, first looking at "reasonable accommodation" language and second, looking at "no inquiry" language.

Reasonable Accommodation Language

Of the 46 states that have enacted "reasonable accommodation" language, 45 states²² have enacted this provision in their general statutes, while only New Jersey²³ has done so in its administrative rules. States have taken two approaches with regard to federal law when enacting reasonable accommodation language in their state fair housing law.

The most popular approach has been to incorporate the exact language used in the Fair Housing Act into state law. This approach has been taken by 35 states.²⁴ An example of this approach is Virginia, whose law states that, "housing discrimination [against persons with disabilities] includes ... a refusal to make reasonable accommodations in rules, practices, policies, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling."²⁵

By contrast, 11 states have modified the language from the Fair Housing Act in some way.²⁶ One approach taken is to condition the reasonableness of the requested accommodation on financial or other concerns on the part of the owner. Wisconsin's statute is typical, saying that a requested accommodation must be made "unless the accommodation would impose an undue hardship on the owner of the housing."²⁷

A second approach taken is to explicitly expand the reach of the requirement, as Arkansas has, to include not only private rooms, but "public and common use areas" as well.²⁸ A final approach taken by those states modifying the federal language is to explicitly apply the requirement not just to owners, but to lessees, sub-lessees, managing agents, or other persons who have the authority to rent or sell a dwelling.²⁹

No Inquiry Language

When a state has adopted the prohibition against inquiring into the nature or extent of a disability, it is just as likely to be found in a state's administrative rules rather than its statutes. Nine states³⁰ have enacted the prohibition in their general statutes, while ten states³¹ place the prohibition in their administrative rules. Both Massachusetts and Pennsylvania have adopted the prohibition in both their general statutes and administrative rules. Unlike the variation found in reasonable accommodation laws, state laws prohibiting inquiries differ little from the federal prohibition—seven states adopt the federal language without any variation.³² Arizona's regulation, which states that "it is unlawful to make an inquiry to determine whether an applicant for a dwelling, a person intending to reside in a dwelling after it is sold, rented, or made available, or any person associated with that person, has a handicap or to make inquiry as to the nature or severity of a handicap of such person."³³

There are three common variations to the federal language among the other 12 states. The first is to explicitly indicate that both written and oral inquiries into the existence or nature of a disability are prohibited, as in California's law, which states that "[i]t shall be unlawful ... for the owner of any housing accommodation to make or to cause to be made any written or oral inquiry concerning the ... disability of any person."³⁴ The second variation is to limit the prohibition only to the individual seeking to purchase or rent, as in Nebraska's law, which provides protection only to "a person seeking to purchase, rent, or lease any housing."³⁵ The third variation is to list those sellers to whom the prohibition applies, an approach taken by Alaska where the prohibition extends to "the owner, lessee, manager, or other person having the right to see, lease, or rent real property."³⁶ Of the three examples, none of the variations was the result of a desire to change the federal "no inquiry" law. Rather, all three states prohibited inquiries of members of a protected class and added in individuals with disabilities as a protected class after their passage of the prohibition.³⁷

New Jersey's prohibition includes the caveat that an inquiry is allowed when "such information is required by an agency of local, state, or federal government and the person states clearly that the information requested is intended for use solely by the government agency,"³⁸ but offers no explanation of this caveat.

Assisted Living Facilities Are "Dwellings" Under the Fair Housing Act

The federal Fair Housing Act prohibits discrimination on the basis of disability in the sale or rental of a "dwelling."³⁹ A

dwelling is defined as “any building, structure, or portion thereof, which is occupied as, or designed or intended for occupancy as, a residence by one or more families.”⁴⁰ Although it is the key to understanding what qualifies as a dwelling, the Fair Housing Act does not define the term “residence.”⁴¹ Faced with the question, courts have adopted the ordinary meaning of the term that a residence is “a temporary or permanent dwelling place, abode, or habitation to which one intends to return, as distinguished from the place of temporary sojourn or transient visit.”⁴² The Third Circuit has applied this approach to find that a nursing home was a dwelling under the Act because the residents consider the nursing facility as their home “very often for the rest of their lives.”⁴³

Like nursing facility residents, residents of assisted living facilities enter with the intention of remaining there for a significant period of time. Assisted living facilities are designed to allow residents to “age in place” by offering a variety of services and assistance.⁴⁴ As with the nursing facility described by the Third Circuit, residents of assisted living facilities often make the facility their final home as “many individuals who move into [assisted living facilities] end their lives there.”⁴⁵ Given that assisted living facilities share the same characteristics that make nursing facilities dwellings, there is no question that assisted living facilities are dwellings under the Fair Housing Act.

Fair Housing Laws Have Been Applied to Assisted Living Facilities

Both courts and litigants have accepted that assisted living facilities fall within the definition of a dwelling as found in the Fair Housing Act. In *Lapid-Laurel v. Zoning Board of*

Adjustment of the Township of Scotch Plains, the litigants agreed that a facility with numerous assisted living beds “qualifies as a ‘dwelling’ within the meaning of the [Fair Housing Act]”.⁴⁶ The Sixth Circuit has placed assisted living facilities under the coverage of the Fair Housing Act, saying that the Act applies to all housing options for persons with disabilities, which includes assisted living facilities.⁴⁷ The District Court for the Eastern District of New York, deciding a case involving an assisted living provider’s challenge to a city’s zoning ordinance, noted that there was no “dispute that [the Fair Housing Act applies] to the facts presented in the instant action.”⁴⁸ Finally, the Department of Justice has brought several fair housing cases against assisted living facilities where the designation of an assisted living facility as a dwelling was not challenged.⁴⁹

Since many states have directly incorporated the language of the federal Fair Housing Act into their own state fair housing laws, state courts have chosen to adopt federal authority as persuasive when interpreting their own fair housing laws.⁵⁰ As a result, the approach taken by federal courts would apply to an analysis of the applicability of state fair housing laws to assisted living facilities.

Individual State Assisted Living Laws That Have Adopted Fair Housing Language

Unlike the widespread adoption of general fair housing laws by the states, less than 25 percent of states have incorporated fair housing language in their assisted living statutes and administrative rules. Only 10 states⁵¹ have incorporated fair housing language into, or referenced fair housing law in, their

Continued on page 12

Subscribe to BIFOCAL, the ABA Commission on Law and Aging’s bi-monthly journal, which provides timely, valuable legal resources pertaining to older persons, generated through the joint efforts of public and private bar groups and the aging network.

The ABA Commission distributes BIFOCAL for free six times a year to elder bar section and committee members, legal services providers, elder law and other private practitioners, judges, court staff, elder advocates, policymakers, law schools, elder law clinics, law libraries, and other professionals in the law and aging network. To read the most recent issue, as well as to search back issues, go to <http://www.abanet.org/aging>

- To contact the editor with news about your bar section’s or committee’s activities, e-mail Jamie Philpotts at Philpotj@staff.abanet.org
- To submit an article for consideration, e-mail Jamie Philpotts for manuscript guidelines and deadline information.

To subscribe, e-mail your name and professional affiliation to Trisha Bullock at Bullockt@staff.abanet.org. Include the word "SUBSCRIBE" in the subject heading.



Securing Fair Housing Rights

Continued from page 11

assisted living statutes and administrative rules. Of those, four states⁵² have incorporated fair housing language into their general statutes, while seven states⁵³ have incorporated the language into their administrative rules (Washington has referred to fair housing laws in both its general statutes and administrative rules). These state laws have taken one of two approaches. They have either adopted provisions generally prohibiting discrimination on the basis of disability, or specifically mentioned or referenced reasonable accommodation language in their law. No state has incorporated or made reference to the prohibition against inquiring into the nature or extent of a disability into their assisted living regulations.

General Prohibition Against Discrimination

The degree to which each state references fair housing law differs considerably. Of the 10 states that have incorporated or referenced fair housing laws in their assisted living regulations, five states generally prohibit discrimination on the basis of disability.⁵⁴

Texas and Wisconsin go farther by referencing fair housing laws in their assisted living regulations. Wisconsin's regulation directly references the Fair Housing Act with regard to the prohibition of discrimination, and is the clearest of the five states in applying fair housing law to their assisted living facilities. Wisconsin's regulations state that "the licensee [of an assisted living facility] shall protect the civil rights of residents as these rights are defined in ... Title VIII of the Civil Rights Act of 1968 [Fair Housing Act] ... the Fair Housing Amendments Act of 1988 ... and all other relevant federal and state statutes."⁵⁵ Texas specifically mentions the Fair Housing Act, but only in reference to a potential area of training for facility managers.⁵⁶ Alabama, along with Louisiana, says that facilities "must meet the applicable provisions of federal law ... pertaining to nondiscrimination on the basis of ... handicap."⁵⁷

Reasonable Accommodation Language

The remaining five states that address fair housing in the context of assisted living facilities refer to or incorporate reasonable accommodation language into their laws and regulations.⁵⁸ Only Rhode Island mentions the Fair Housing Act by name, saying that "residents are entitled to all rights recognized by state and federal law with respect to discrimination ... [including] ... [having] a service animal, consistent with the 'reasonable accommodations' clause of the Fair

Housing Act."⁵⁹ A second approach, taken by Washington and Delaware, is to mention the need to provide "reasonable accommodations," and relating the definition back to the definition found in federal law. Washington's statute is typical of this approach, mandating that "if a boarding home⁶⁰ licensee chooses to provide assistance with activities of daily living, the licensee shall provide at least the minimal level of assistance for all activities of daily living consistent with ... the reasonable accommodation requirements in state or federal laws."⁶¹

New Hampshire and Maine do not reference federal or state law when requiring reasonable accommodations, but they attach a condition similar to conditions contained in federal law. Maine's regulation is typical, stating that a provider must make reasonable accommodations in "regulations, policies, practices or services" when requested unless "the accommodation ... imposes an undue financial burden or results in a fundamental change in the program."⁶²

Lack of Awareness of Fair Housing Rights

According to a 2005 survey by the U.S. Department of Housing and Urban Development regarding knowledge of the protections of the Fair Housing Act, persons over the age of 65 are the least knowledgeable age group with regard to their rights under the Fair Housing Act.⁶³ Combined with the fact that only 58 percent of those with a disability (and only 54 percent of the total population) were aware that a failure to allow construction of a wheelchair ramp violated the Fair Housing Act,⁶⁴ the lack of awareness among older Americans of the protections and rights afforded to individuals with disabilities under the Fair Housing Act is a serious issue.⁶⁵

With the general lack of awareness, it is reasonable to conclude that those older individuals who are living in or seeking admittance to an assisted living facility, currently and in the future, are not, or will not, be aware of their fair housing rights. Given that there are currently nearly one million residents in assisted living facilities across the country,⁶⁶ almost all of whom would be considered disabled under the Fair Housing Act, nearly 600,000 residents, or 60 percent of the assisted living facility population, lack an awareness of the basic housing rights to which they are entitled under the Fair Housing Act.

Assisted living providers are often required to inform assisted living residents of their rights as residents.⁶⁷ Providers, in turn, know to look to state assisted living statutes and administrative rules to determine their legal obligations and the rights of the residents in their care. However, state assisted living law is generally silent regarding the application of fair housing laws and rights to assisted living

facilities. One result is that assisted living providers are “oblivious to the mandates of [the Fair Housing Act].”⁶⁸ Given this ignorance of the law, providers are unable to pass this important information along to their residents and residents’ families.

The silence of state statutes and administrative rules that hinders effective notification by assisted living providers also hinders elder rights advocates’ ability to educate residents. Advocates put out informational materials listing a resident’s rights based on the rights listed in state statutes and administrative rules. A result of the failure by states to adequately incorporate fair housing language in their assisted living statutes and administrative rules is that literature published by advocates to educate residents of their rights is lacking in this important regard.⁶⁹

Another result of this failure to incorporate fair housing rights in state assisted living law is that residents are unable to educate themselves, and providers and advocates are unable to educate residents, of the rights and protections granted by the Fair Housing Act.

Recommendations

Residents, providers, and advocates know to turn to state assisted living statutes and administrative rules for their legal rights and duties. Therefore, these laws should be used as one vehicle to remedy the lack of awareness of residents, providers, and advocates of the applicability and rights of the Fair Housing Act.⁷⁰ Based, in part, on recommendations from various fair housing and elder law advocates,⁷¹ this paper advocates adopting a four-pronged approach in state assisted living laws to better educate residents, providers, and advocates: (a) incorporate fair housing law provisions into assisted living licensing requirements; (b) include details of the fair housing law in the residents’ rights section; (c) notification of a resident’s rights, including rights under the Fair Housing Act, at admission; (d) administrator and staff training on residents’ rights.

Prior to opening a facility, providers must comply with a specific set of guidelines and responsibilities in order to obtain and retain a license to operate an assisted living facility.⁷² These include requiring assisted living licensees to abide by relevant state law related to the operation of assisted living facilities,⁷³ or requiring the licensee to develop relevant facility policies subject to review before a license is issued.⁷⁴ In order to better ensure compliance with fair housing laws, these licensing regulations should include two additional provisions. First, based on Washington’s licensee responsibility regulation,⁷⁵ licensees should be required to “comply with all requirements of these regulations, [the assisted living laws in the state code], and all other applica-

ble federal and state law, including but not limited to ... federal and state fair housing law.” Second, based on Maine’s licensing regulations,⁷⁶ an assisted living facility licensee should “be required to develop a written admission policy, residents’ rights sheet, and request form for application for a reasonable accommodation to be submitted with the application for a license.”

State assisted living regulations contain a list of specific rights that each resident is entitled to exercise.⁷⁷ Often found in their rights is a mandate that residents be free from discrimination on the basis of disability in accordance with federal law,⁷⁸ but fail to mention the Fair Housing Act by name. In order to better inform residents of assisted living facilities and their families of the applicability of the rights and pro-

Continued on page 14

Second Imprint

Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers

ABA Commission on Law and Aging
and American Psychological Association
(72 pp. 2005. \$25)

The ABA Commission has reissued its best-selling handbook *Assessment of Older Adults with Diminished Capacity: A Handbook for Lawyers*.

The book offers elder law attorneys, trusts and estates lawyers, family lawyers, and general practitioners a conceptual framework and a practical system for addressing problems of client capacity, in some cases with help from a clinician. While most older adults will not have impaired capacity, some will. Obvious dementia impair decision-making capacity—but what about older adults with an early stage of dementia or with mild central nervous system damage? Such clients may have subtle decisional problems and questionable judgments troubling to a lawyer.

To order, e-mail your request to the ABA Commission at abaaging@abanet.org.



Securing Fair Housing Rights

Continued from page 13

tections of the Fair Housing Act, states should adopt Fair Housing Act provisions as a separate right. This paper recommends that this language should state that “residents are entitled to all rights under the federal Fair Housing Act and Fair Housing Amendments Act, including but not limited to: (1) reasonable accommodations, (2) reasonable modifications, and (3) protection from prohibited inquiries.” Additionally, this paper recommends that the statute use specific language from the Fair Housing Act.⁷⁹ Adding this language would make it clear to residents, their families, providers, and advocates that the Fair Housing Act, and the rights and prohibitions they provide, apply to assisted living facilities.

In addition to enumerating a specific list of rights, such as fair housing rights in a state’s assisted living statutes and administrative rules, states should also mandate that facilities provide residents with a copy and explanation of their rights, including fair housing rights, as listed in the state’s assisted living statutes and administrative rules, during the admissions process. This could be done two ways: (a) by referencing the information in the resident’s contract and (b) by providing the resident with a copy of their rights. Pennsylvania’s law is a good model to use. Their regulations mandate that: (a) residents be informed of their rights verbally and in writing in a way that is understandable to the resident; (b) the resident’s rights must be posted in a conspicuous place; (c) and the residents must sign a statement acknowledging the receipt of their rights.⁸⁰ Following this approach ensures that residents have multiple avenues of access to information about their rights when they are concerned that they have been a victim of housing discrimination.

In addition to providing a copy of their rights to residents at admission, residency contracts should reference the resident’s rights as defined in state law. The model approach is that taken by Pennsylvania. Pennsylvania’s assisted living regulations require contracts to contain “written information on the resident’s rights and complaint procedures as specified in [the resident’s rights section of the regulations].”⁸¹ This approach provides further notification of the legal rights and obligations of both parties to the residency contract.

Finally, facility staff may be educated through training. Administrator and staff training, including training on residents’ rights, is often mandated as a licensing requirement.⁸² To ensure that all facility administrators and staff are aware of the protections and rights afforded residents by the Fair Housing Act, training on residents’ rights should specifically address fair housing rights as enumerated in the residents’

right section of state law. Using Pennsylvania regulations as a basic model, which requires staff training on residents’ rights,⁸³ states should adopt language that reads in part: “prior to or during their first work day at the facility, all facility administrators, staff, and volunteers shall be trained in the following areas ... residents’ rights as found in [the Residents Rights section], including their rights under the Fair Housing Act ... and all other applicable federal law.”

The immediate ramifications of adding fair housing language would be to assist residents and their advocates in identifying those situations where residents are subjected to housing discrimination, and successfully advocate for themselves and exercise their rights. Additionally, providers will become more aware of their responsibilities under the Fair Housing Act, and may develop forms to be given to residents along with a copy of their rights, for residents to use when requesting a reasonable accommodation.

For example, a person may be living in an assisted living facility that has a no-pet policy. In response to new mental health behaviors, the facility is considering asking her to leave. Her psychiatrist has prescribed a service animal for her, which the psychiatrist believes will help alleviate the new behaviors. Because of the no-pet policy, the person may believe that her only option would be to move. But a resident who has received notice from her provider about her fair housing rights, and has been educated on these fair housing rights, would be able to ask the facility to waive the no-pet policy as a reasonable accommodation under the Fair Housing Act. This would allow her to stay in her current home.

A second example is where a person is living in a facility that requires residents to transfer to dining room chairs from their wheelchairs in order to use the dining room. As a result of an increasing inability to transfer from his wheelchair to a dining room chair, a resident may be unable to use and enjoy a facility’s dining room. A resident who was aware of his fair housing rights could ask the facility to waive its policy as a reasonable accommodation in order to allow him an equal opportunity to continue to use and enjoy the entire facility along with the other residents.

Litigation may result if a provider fails to provide the reasonable accommodation or makes a prohibited inquiry, but the real result will be residents who are able to exercise their rights by asking for reasonable accommodations at the facility level, providers who are knowledgeable about their responsibilities under the Fair Housing Act, thus, making litigation less likely or unnecessary.

Conclusion

This review of state fair housing and state assisted living facility laws found that although almost every state has enacted some sort of fair housing law, very few states have adopted fair housing language directly into their assisted living laws and regulations. Although 47⁸⁴ states have adopted some form of fair housing law, only 11⁸⁵ states have incorporated or referenced either federal or state fair housing law into their assisted living facility regulations. In addition, while most states have adopted federal language in both the “reasonable accommodation” and “prohibited inquiry” contexts in their states’ fair housing law, this same level of clarity is not found in assisted living regulations.

While the language pertaining to “reasonable accommodations” is nearly universally found in state fair housing laws, only six states⁸⁶ mention the reasonable accommodation requirement in their assisted living laws. Additionally, although only 17 states⁸⁷ have specifically adopted the prohibition on certain inquiries into their state law, no state has incorporated such language into their assisted living facility laws. One result of the failure of states to adequately describe the fair housing rights of assisted living residents in assisted living laws is that residents have little guidance as to what their rights are and how to exercise those rights for their benefit.

This review of various state laws was undertaken to determine the degree to which consumers of assisted living services, which are regulated solely by the states without any additional regulation from the federal government, would be informed of their right to reasonable accommodation and no-inquiry protection in assisted living facilities. This paper finds, based on its survey of state assisted living statutes and administrative rules, that consumers and providers reading their state’s assisted living statutes would be ill-informed as to the applicability and rights granted under the Fair Housing Act. The best way to educate assisted living residents and their families, providers, and advocates is to encourage states to amend the residents’ rights section of their assisted living statutes and administrative rules to specifically include federal Fair Housing Act language and to require providers to notify residents of these rights. Providing this information in the same statutes and rules where people look to understand an assisted living provider’s responsibilities will help educate residents and their families, providers, and advocates; help avoid costly litigation between residents and providers; and allow residents to remain in the facility they call “home.”

Notes

1. The majority of those who are disabled are “elderly.” Robert G. Schwemm & Michael Allen, *For the Rest of Their Lives: Seniors and the Fair Housing Act*, 90 Iowa L. Rev. 121, 136-38 (2004).
2. *Id.*
3. Eric M. Carlson, *Critical Issues in Assisted Living: Who’s In, Who’s Out, and Who’s Providing the Care* 8 (2005).
4. Activities of daily living include: eating, bathing, toileting, dressing, and transferring. An inability to independently perform an activity of daily living often precludes an individual from living independently.
5. Eric M. Carlson, *Disability Discrimination in Long-Term Care: Using the Fair Housing Act to Prevent Illegal Screening in Admissions to Nursing Homes and Assisted Living Facilities*, 21 Notre Dame J. L. Ethics & Pub. Pol’y 363, 372 (2007).
6. *Id.* at 372-373.
7. House Report No. 100-711 (1988) at 18.
8. 42 U.S.C. §3604(f)(1).
9. 42 U.S.C. §3602(h).
10. 24 C.F.R. §100.201.
11. 42 U.S.C. §3604(f)(3)(b).
12. Robert L. Schonfeld, “Reasonable Accommodation” Under the Federal Fair Housing Amendments Act, 25 Fordham Urb. L. J. 413, 423-24 (1998); John Marshall Law School Fair Housing Legal Support Center, *Fair Housing Rights of Seniors with Disabilities: What Seniors and their Families Need to Know* 16-17 (2006).
13. *Bentley v. Peace and Quiet Realty 2 LLC*, 367 F.Supp.2d 341, 344 (E.D.N.Y. 2005); John Marshall Law School Fair Housing Legal Support Center, *supra* note 12, at 19.
14. 24 C.F.R. §100.204(b).
15. 24 C.F.R. §100.202(c).
16. 24 C.F.R. §100.202(c).
17. See Ala. Code §24-8-1 - §24-8-15 (2007); Colo. Rev. Stat. Ann. §24-34-501 - §24-34-509 (West 2007); Del. Code Ann. tit. 6, §4600 - §4619 (2007); Fla. Stat. Ann. §760.20 - §760.37 (West 2007); Ga. Code Ann. §8-3-200 - §8-3-223 (West 2007); Haw. Rev. Stat. §515-1 - §515-20 (2007); Ind. Code Ann. §22-9.5-1-1 - §22-9.5-11-3 (West 2007); La. Rev. Stat. Ann. §51:2601 - §51:2614 (2007); Md. Ann. Code art. 49B, §19 - §39 (2007); Nev. Rev. Stat. Ann. §118.010 - §118.120 (West 2007); N.C. Gen. Stat. Ann. §41A-1 - §41A-10 (West 2007); N.D. Cent. Code §14-02.5-01 0 §14-02.5-46 (2007); Okla. Stat. Ann. tit. 25, §1451 - §1453 (West 2007); R.I. Gen. Laws §34-37-1 - §34-37-11 (2007); S.C. Code Ann. §31-21-10 - §31-21-150 (2007); Tex. Prop. Code Ann. §15-301.001 - §15-301.171 (Vernon 2007); Utah Code Ann. §57-21-1 - §57-21-14 (West 2007); Vt. Stat. Ann. tit. 9, §4500 - §4508 (2007); Va. Code Ann. §36-96.1 - §36-96.23 (West 2007); W. Va. Code Ann. §5-11A-1 - §5-11A-20 (West 2007).
18. Alaska Stat. §18.80.10 - §18.80.300 (2007); Ariz. Rev. Stat. Ann. §41-1491 - §41-1491.37 (2007); Ark. Code Ann. §16-123-201 - §16-123-210 and §16-123-301 - §16-123-348 (West 2007); Cal. Gov’t Code §12955 - §12956.2 and §12927 (West 2007); Conn. Gen. Stat. Ann. §46a-51 - §46a-104 (West 2007); D.C. Code §2-1401.01 - §2-1404.04 (2007); 775 Ill. Comp. Stat. Ann. 5/3-101 - 5/3-106 (West 2007); Iowa Code Ann. §216.1 - §216.20 (West 2007); Kan. Stat.

Continued on page 16

Securing Fair Housing Rights

Continued from page 15

- Ann. §44-1001 - §44-1044 (2007); Ky. Rev. Stat. Ann. §344.010 - §344.990 (West 2007); Me. Rev. Stat. Ann. tit. 5, §4581 - §4583 (2007); Mass. Gen. Laws Ann. ch. 151B, §1 - §10 (West 2007); Mich. Comp. Laws Ann. §37.1101 - §37.1103, §37.1501 - §37.1507, §37.2101 - §37.2103, §37.2301 - §37.2304, and §37.2501 - §37.2507 (West 2007); Minn. Stat. Ann. §363A.01 - §363A.41 (West 2007); Mo. Ann. Stat. §213.010 - §213.137 (West 2007); Mont. Code Ann. §49-2-101 - §49-2-602 (2007); Neb. Rev. Stat. §20-301 - §20-344 (2007); N.H. Rev. Stat. Ann. §354-A:1 - §354-A:26 (2007); N.J. Admin. Code §3:13-3.1 - §13:13-3.7 (2007); N.Y. Exec. §290 - §301 (2007); Ohio Rev. Code Ann. §4112.01 - §4112.15 (West 2007); Or. Rev. Stat. Ann. §659A.145, §659A.420 - §659A.424 (West 2007); 43 Pa. Stat. Ann. §951 - §963 (West 2007); S.D. Codified Laws §20-13-1 - §20-13-56; Tenn. Code Ann. §4-21-601 - §4-21-607 (West 2007); Wash. Rev. Code Ann. §49.60.010 - §49.60.401 (West 2007); Wis. Stat. Ann. §106.50(1) - §106.50(8) (West 2007).
19. *See* Ala. Code §24-8-7(g)(2) (2007); Ariz. Rev. Stat. Ann. §41-1491.19(e)(2) (2007); Ark. Code Ann. §16-123-314(c)(2) (West 2007); Cal. Gov't Code §12955(a) (West 2007); Cal. Gov't Code §12927(c)(1) (West 2007); Colo. Rev. Stat. Ann. §24-34-502.2(2)(b) (West 2007); Conn. Gen. Stat. Ann. §46a-64c(a)(6)(C)(ii) (West 2007); Del. Code Ann. tit. 6, §4603A(a)(2) (2007); D.C. Code §2-1402.21(d)(3)(B) (2007); Fla. Stat. Ann. §760.23(9)(b) (West 2007); Ga. Code Ann. §8-3-202(7)(B) (West 2007); Haw. Rev. Stat. §515-3(11) (2007); 775 Ill. Comp. Stat. Ann. 5/3-102.1(C)(2) (West 2007); Ind. Code Ann. §22-9.5-5-5(c)(2) (West 2007); Iowa Code Ann. §216.8A(3)(c)(2) (West 2007); Kan. Stat. Ann. §44-1016(h)(3)(B) (2007); Ky. Rev. Stat. Ann. §344.360(11)(b) (West 2007); La. Rev. Stat. Ann. §51:2606(6)(c)(ii) (2007); Me. Rev. Stat. Ann. tit. 5, §4582-A(2) (2007); Md. Ann. Code art. 49B, §22(9) (2007); Mass. Gen. Laws Ann. ch.151B, §4(7A)(2-3) (West 2007); Mich. Comp. Laws Ann. §37.1102(2) (West 2007); Mich. Comp. Laws Ann. §37.1506a(1)(b) (West 2007); Minn. Stat. Ann. §363A.10(1)(2) (West 2007); Mo. Ann. Stat. §213.040(2)(2) (West 2007); Mont. Code Ann. §49-2-305(5)(b) (2007); Neb. Rev. Stat. §20-319(2)(b) (2007); Nev. Rev. Stat. Ann. §118.101(1)(b) (West 2007); N.H. Rev. Stat. Ann. §354-A:12(III)(b) (2007); N.J. Admin. Code §13:13-3.4(f)(2) (2007); N.Y. Exec. §296(2-a)(d)(2) (2007); N.C. Gen. Stat. Ann. §41A-4(a)(2b) (West 2007); N.D. Cent. Code §14-02.5-06(3)(b) (2007); Ohio Rev. Code Ann. §4112.02(H)(19) (West 2007); Okla. Stat. Ann. tit. 25, §1452(A)(16)(b) (West 2007); Or. Rev. Stat. Ann. §659A.145(2)(b) (West 2007); 43 Pa. Stat. Ann. §955(h)(3.2) (West 2007); R.I. Gen. Laws §34-37-4(e)(1) (2007); S.C. Code Ann. §31-21-70(G)(2) (2007); S.D. Codified Laws §20-13-23.7 (2007); Tenn. Code Ann. §4-21-601(b)(2)(B) (West 2007); Tex. Prop. Code Ann. §15-301.025(c)(2) (Vernon 2007); Utah Code Ann. §57-21-5(4)(b) (West 2007); Vt. Stat. Ann. tit. 9, §4503(a)(10) (2007); Va. Code Ann. §36-96.3(B)(ii) (West 2007); Wash. Rev. Code Ann. §49.60.222(2)(b) (West 2007); W. Va. Code Ann. §5-11A-5(3)(B) (West 2007); Wis. Stat. Ann. §106.50(2r)(4) (West 2007).
20. Alaska Stat. §18.80.240(3) (2007); Ariz. Admin. Code §R10-2-107 (2007); Cal. Gov't Code §12955(b) (West 2007); Ga. Comp. R. & Regs. 186-2-.02(c)(3) (2007); 910 Ind. Admin. Code 2-3-3(c) (2007); Md. Code Regs. 14.03.04.17(B)(3) (2007); Mass. Gen. Laws Ann. ch. 151B, §4(7)(c) (West 2007); 804 Mass. Code Regs. 2.01(5)(c) (2007); Mo. Code Regs. Ann. tit. 8, §60-4.015(1) (2007); Mont. Code Ann. §49-2-305(1)(c) (2007); Neb. Rev. Stat. §20-318(5) (2007); N.J. Admin. Code §13:13-3.3 (2007); N.Y. Exec. §296(2-a)(c) (2007); Ohio Rev. Code Ann. §4112.02(H)(17) (West 2007); 43 Pa. Stat. Ann. §955(h)(6) (West 2007); 16 Pa. Code §5.10(a) (2007); 16 Pa. Code §45.10(b) (2007); R.I. Gen. Laws §34-37-4(a) (2007); S.C. Code Ann. Regs. 65-215(C)(3) (2007); 18 Va. Admin. Code §135-50-200(B) (2007).
21. N.M. Stat. Ann. §28-1-1 - §28-1-14 (West 2007).
22. *See* Ala. Code §24-8-7(g)(2) (2007); Ariz. Rev. Stat. Ann. §41-1491.19(e)(2) (2007); Ark. Code Ann. §16-123-314(c)(2) (West 2007); Cal. Gov't Code §12955(a) (West 2007); Cal. Gov't Code §12927(c)(1) (West 2007); Colo. Rev. Stat. Ann. §24-34-502.2(2)(b) (West 2007); Conn. Gen. Stat. Ann. §46a-64c(a)(6)(C)(ii) (West 2007); Del. Code Ann. tit. 6, §4603A(a)(2) (2007); D.C. Code §2-1402.21(d)(3)(B) (2007); Fla. Stat. Ann. §760.23(9)(b) (West 2007); Ga. Code Ann. §8-3-202(7)(B) (West 2007); Haw. Rev. Stat. §515-3(11) (2007); 775 Ill. Comp. Stat. Ann. 5/3-102.1(C)(2) (West 2007); Ind. Code Ann. §22-9.5-5-5(c)(2) (West 2007); Iowa Code Ann. §216.8A(3)(c)(2) (West 2007); Kan. Stat. Ann. §44-1016(h)(3)(B) (2007); Ky. Rev. Stat. Ann. §344.360(11)(b) (West 2007); La. Rev. Stat. Ann. §51:2606(6)(c)(ii) (2007); Me. Rev. Stat. Ann. tit. 5, §4582-A(2) (2007); Md. Ann. Code art. 49B, §22(9) (2007); Mass. Gen. Laws Ann. ch.151B, §4(7A)(2-3) (West 2007); Mich. Comp. Laws Ann. §37.1102(2) (West 2007); Mich. Comp. Laws Ann. §37.1506a(1)(b) (West 2007); Minn. Stat. Ann. §363A.10(1)(2) (West 2007); Mo. Ann. Stat. §213.040(2)(2) (West 2007); Mont. Code Ann. §49-2-305(5)(b) (2007); Neb. Rev. Stat. §20-319(2)(b) (2007); Nev. Rev. Stat. Ann. §118.101(1)(b) (West 2007); N.H. Rev. Stat. Ann. §354-A:12(III)(b) (2007); N.Y. Exec. §296(2-a)(d)(2) (2007); N.C. Gen. Stat. Ann. §41A-4(a)(2b) (West 2007); N.D. Cent. Code §14-02.5-06(3)(b) (2007); Ohio Rev. Code Ann. §4112.02(H)(19) (West 2007); Okla. Stat. Ann. tit. 25, §1452(A)(16)(b) (West 2007); Or. Rev. Stat. Ann. §659A.145(2)(b) (West 2007); 43 Pa. Stat. Ann. §955(h)(3.2) (West 2007); R.I. Gen. Laws §34-37-4(e)(1) (2007); S.C. Code Ann. §31-21-70(G)(2) (2007); S.D. Codified Laws §20-13-23.7 (2007); Tenn. Code Ann. §4-21-601(b)(2)(B) (West 2007); Tex. Prop. Code Ann. §15-301.025(c)(2) (Vernon 2007); Utah Code Ann. §57-21-5(4)(b) (West 2007); Vt. Stat. Ann. tit. 9, §4503(a)(10) (2007); Va. Code Ann. §36-96.3(B)(ii) (West 2007); Wash. Rev. Code Ann. §49.60.222(2)(b) (West 2007); W. Va. Code Ann. §5-11A-5(3)(B) (West 2007); Wis. Stat. Ann. §106.50(2r)(4) (West 2007).
23. N.J. Admin. Code §13:13-3.4(f)(2) (2007).
24. Ala. Code §24-8-7(g)(2) (2007); Ariz. Rev. Stat. Ann. §41-1491.19(e)(2) (2007); Cal. Gov't Code §12927(c)(1) (West 2007); Colo. Rev. Stat. Ann. §24-34-502.2(2)(b) (West 2007); Conn. Gen. Stat. Ann. §46a-64c(a)(6)(C)(ii) (West 2007); Del. Code Ann. tit. 6, §4603A(a)(2) (2007); D.C. Code §2-1402.21(d)(3)(B) (2007); Fla. Stat. Ann. §760.23(9)(b) (West 2007); Ga. Code Ann. §8-3-202(7)(B) (West 2007); 775 Ill. Comp. Stat. Ann. 5/3-102.1(C)(2) (West 2007); Ind. Code Ann. §22-9.5-5-5(c)(2) (West 2007); Iowa Code Ann. §216.8A(3)(c)(2) (West 2007); Kan. Stat. Ann. §44-1016(h)(3)(B) (2007); Ky. Rev. Stat. Ann. §344.360(11)(b) (West 2007); La. Rev. Stat. Ann. §51:2606(6)(c)(ii) (2007); Md. Ann. Code art. 49B, §22(9) (2007); Minn. Stat. Ann. §363A.10(1)(2) (West 2007); Mo. Ann. Stat. §213.040(2)(2) (West 2007); Mont. Code Ann. §49-2-305(5)(b) (2007); Neb. Rev. Stat. §20-319(2)(b) (2007);

- Nev. Rev. Stat. Ann. §118.101(1)(b) (West 2007); N.H. Rev. Stat. Ann. §354-A:12(III)(b) (2007); N.J. Admin. Code §13:13-3.4(f)(2) (2007); N.C. Gen. Stat. Ann. §41A-4(a)(2b) (West 2007); N.D. Cent. Code §14-02.5-06(3)(b) (2007); Okla. Stat. Ann. tit. 25, §1452(A)(16)(b) (West 2007); Or. Rev. Stat. Ann. §659A.145(2)(b) (West 2007); 43 Pa. Stat. Ann. §955(h)(3.2) (West 2007); R.I. Gen. Laws §34-37-4(e)(1) (2007); S.C. Code Ann. §31-21-70(G)(2) (2007); Tenn. Code Ann. §4-21-601(b)(2)(B) (West 2007); Tex. Prop. Code Ann. §15-301.025(c)(2) (Vernon 2007); Utah Code Ann. §57-21-5(4)(b) (West 2007); Va. Code Ann. §36-96.3(B)(ii) (West 2007); W. Va. Code Ann. §5-11A-5(3)(B) (West 2007).
25. Va. Code Ann. §36-96.3(B)(ii) (West 2007).
26. Ark. Code Ann. §16-123-314(c)(2) (West 2007); Haw. Rev. Stat. §515-3(11) (2007); Me. Rev. Stat. Ann. tit. 5, §4582-A(2) (2007); Mass. Gen. Laws Ann. ch.151B, §4(7A)(2-3) (West 2007); Mich. Comp. Laws Ann. §37.1102(2) (West 2007); N.Y. Exec. §296(2-a)(d)(2) (2007); Ohio Rev. Code Ann. §4112.02(H)(19) (West 2007); S.D. Codified Laws §20-13-23.7 (2007); Vt. Stat. Ann. tit. 9, §4503(a)(10) (2007); Wash. Rev. Code Ann. §49.60.222(2)(b) (West 2007); Wis. Stat. Ann. §106.50(2r)(4) (West 2007).
27. Wis. Stat. Ann. §106.50(2r)(4) (West 2007).
28. Ark. Code Ann. §16-123-314(c)(2) (West 2007).
29. N.Y. Exec. §296(2-a)(d)(2) (2007).
30. Alaska Stat. §18.80.240(3) (2007); Cal. Gov't Code §12955(b) (West 2007); Mass. Gen. Laws Ann. ch. 151B, §4(7)(c) (West 2007); Mont. Code Ann. §49-2-305(1)(c) (2007); Neb. Rev. Stat. §20-318(5) (2007); N.Y. Exec. §296(2-a)(c) (2007); Ohio Rev. Code Ann. §4112.02(H)(17) (West 2007); 43 Pa. Stat. Ann. §955(h)(6) (West 2007); R.I. Gen. Laws §34-37-4(a) (2007).
31. Ariz. Admin. Code §R10-2-107 (2007); Ga. Comp. R. & Regs. 186-2-.02(c)(3) (2007); 910 Ind. Admin. Code 2-3-3(c) (2007); Md. Code Regs. 14.03.04.17(B)(3) (2007); 804 Mass. Code Regs. 2.01(5)(c) (2007); Mo. Code Regs. Ann. tit. 8, §60-4.015(1) (2007); N.J. Admin. Code §13:13-3.3 (2007); 16 Pa. Code §45.10(a) (2007); 16 Pa. Code §45.10(b) (2007); S.C. Code Ann. Regs. 65-215(C)(3) (2007); 18 Va. Admin. Code §135-50-200(B) (2007).
32. Ariz. Admin. Code §R10-2-107 (2007); Ga. Comp. R. & Regs. 186-2-.02(c)(3) (2007); 910 Ind. Admin. Code 2-3-3(c) (2007); Mo. Code Regs. Ann. tit. 8, §60-4.015(1) (2007); Ohio Rev. Code Ann. §4112.02(H)(17) (West 2007); 16 Pa. Code §45.10(b) (2007); S.C. Code Ann. Regs. 65-215(C)(3) (2007); 18 Va. Admin. Code §135-50-200(B) (2007).
33. Ariz. Admin. Code §R10-2-107 (2007).
34. Cal. Gov't Code §12955(b) (West 2007).
35. Neb. Rev. Stat. §20-318(5) (2007).
36. Alaska Stat. §18.80.240(3) (2007).
37. Alaska added individuals with disabilities to its list of protected classes in 1987, while Nebraska and California did so in 1991 and 1992 respectively.
38. N.J. Admin. Code §13:13-3.3 (2007).
39. 42 U.S.C. §3604(a).
40. 42 U.S.C. §3602(b). Under the Fair Housing Act a family can consist of only a single individual. 42 U.S.C. §3602(c).
41. *Hovsons Inc. v. Township of Brick*, 89 F.3d 1096, 1102 (3rd Cir. 1996).
42. *Id.*
43. *Id.*
44. Schwemm and Allen, *supra* note 1, at 136-38.
45. *Id.* at 138.
46. *Lapid-Laurel v. Zoning Board of Adjustment of the Township of Scotch Plains*, 284 F.3d 442, 459 (3rd Cir. 2002).
47. *Smith & Lee Associates, Inc. v. City of Taylor*, 13 F.3d 920, 924 (6th Cir. 1993).
48. *Sunrise Development, Inc. v. Town of Huntington*, 62 F.Supp.2d 762, 774 (E.D.N.Y. 1999).
49. Consent Order, *United States v. Red Oaks Assisted Living, Inc.* (D. Alaska 2005) (accepting the statement in the complaint that the assisted living facility at issue was a dwelling under the Fair Housing Act. Complaint at 1, *United States v. Red Oaks Assisted Living, Inc.* (D. Alaska 2005)); Consent Order, *United States v. Boyers Personal Care Homes* (W.D. Pa. 2004) (accepting the statement in the complaint that the personal care home at issue was a dwelling under the Fair Housing Act. Complaint at 2, *United States v. Boyers Personal Care Homes* (W.D. Pa. 2004)).
50. *See Candy v. Prescott Canyon Estates Homeowners Association*, 60 P.3d 231, 233 n.3 (Ariz. Ct. App. 2002) (“Because the provisions of Arizona’s Fair Housing Act ... are virtually identical to those provisions of the federal [fair housing] act, federal case authority is persuasive in interpreting Arizona’s statute.”); *Weinstein v. Cherry Oaks Retirement Community*, 917 P.2d 336, 338 (Colo. Ct. App. 1996) (“Because the [Colorado Fair Housing Act] is almost identical to the federal Fair Housing Amendment Act, federal case authority is deemed persuasive in interpreting the provisions of the [Colorado Fair Housing Act].”).
51. *See* Ala. Admin. Code r. 420-5-1 – 420-5-22 (2007); 16-3225 Del. Code Regs. §1.0 - §20.0 (Weil 2007); La. Rev. Stat. Ann. §40:2151 - §40:2163 (2007); 10-149-113 Me. Code R. §1 - §16 (Weil 2007); N.H. Rev. Stat. Ann. §151:1 - §151:35 (2007); 55 Pa. Code §2600.1 - §2600.270 (2007); R.I. Gen. Laws §23-17.4-1 - §23-17.4-36 (2007); 40 Tex. Admin. Code §92.41 - §92.53 (2007); Wash. Rev. Code Ann. §18.20.010 - §18.20.415 (West 2007); Wash. Rev. Code Ann. §70.129.005 - §70.129.170 (West 2007); Wash. Admin. Code 388-78A-2010 – 388-78A-3230 (2007); Wis. Admin. Code HFS §83.01 - §83.65 (2007).
52. La. Rev. Stat. Ann. §40:2155(B)(5) (2007); N.H. Rev. Stat. Ann. §151:21(XV) (2007); R.I. Gen. Laws §23-17.4-16(a)(1)(v) (2007); Wash. Rev. Code Ann. §18.20.310(2) (West 2007); Wash. Rev. Code Ann. §18.20.320(1) (West 2007); Wash. Rev. Code Ann. §18.20.330(1) (West 2007); Wash. Rev. Code Ann. §70.129.140(5)(a) (West 2007).
53. Ala. Admin. Code r. 420-5-4-.03(f) (2007); Ala. Admin. Code r. 420-5-20-.03(f) (2007); 16-3225 Del. Code Regs. §13.2.13 (Weil 2007); 10-149-113 Me. Code R. §5.26.2 (Weil 2007); 55 Pa. Code §2600.18 (2007); 55 Pa. Code §2600.42(a) (2007); 40 Tex. Admin. Code §92.41(a)(1)(C)(viii) (2007); Wash. Admin. Code 388-78A-2050(1)(b) (2007); Wash. Admin. Code 388-78A-2190(2) (2007); Wash. Admin. Code 388-78A-2200 (2007); Wash. Admin. Code 388-78A-2710(7) (2007); Wis. Admin. Code HFS §83.21(1)(b) (2007).
54. Ala. Admin. Code r. 420-5-4-.03(f) (2007); Ala. Admin. Code r. 420-5-20-.03(f); La. Rev. Stat. Ann. §40:2155(B)(5) (2007); 55 Pa. Code §2600.18 (2007); 55 Pa. Code §2600.42(a) (2007); 40 Tex. Admin. Code §92.41(a)(1)(C)(viii) (2007); Wis. Admin. Code HFS §83.21(1)(b) (2007).
55. Wis. Admin. Code HFS §83.21(1)(b) (2007).
56. 40 Tex. Admin. Code §92.41(a)(1)(C)(viii) (2007).
57. Ala. Admin. Code r. 420-5-4-.03(f) (2007).
58. 16-3225 Del. Code Regs. §13.2.13 (Weil 2007); 10-149-113 Me.

Continued on page 18

Securing Fair Housing Rights

Continued from page 17

Code R. §5.26.2 (Weil 2007); N.H. Rev. Stat. Ann. §151:21(XV) (2007); R.I. Gen. Laws §23-17.4-16(a)(1)(v) (2007); Wash. Rev. Code Ann. §18.20.310(2) (West 2007); Wash. Rev. Code Ann. §18.20.320(1) (West 2007); Wash. Rev. Code Ann. §18.20.330(1) (West 2007); Wash. Rev. Code Ann. §70.129.140(5)(a) (West 2007); Wash. Admin. Code 388-78A-2050(1)(b) (2007); Wash. Admin. Code 388-78A-2190(2) (2007); Wash. Admin. Code 388-78A-2200 (2007); Wash. Admin. Code 388-78A-2710(7) (2007).
59. R.I. Gen. Laws §23-17.4-16(a)(1)(v) (2007).
60. “Boarding Home” is the name given to assisted living facilities in Washington. Carlson, *supra* note 3, at 73.
61. Wash. Rev. Code Ann. §18.20.310(2) (West 2007).
62. 10-149-113 Me. Code R. §5.26.2 (Weil 2007).
63. Martin D. Abravanel, *Do We Know More? Trends in Public Knowledge, Support and Use of Fair Housing Law* 16-17 (2006).
64. *Id.* at 14.
65. The majority of those who are disabled are “elderly”. Schwemm & Allen, *supra* note 1, at 136-38. It is reasonable to roughly equate the disabled and older population and to conclude that of the 42 percent of disabled individuals who are unaware of their fair housing rights nearly all of them are older individuals.
66. Carlson, *supra* note 3, at 8.
67. *See e.g.*, R.I. Gen. Laws §23-17.4-16(a)(2)(iv) (2007).
68. Schwemm and Allen, *supra* note 1, at 124.
69. *See e.g.*, California Advocates for Nursing Home Reform, *RCFE/Assisted Living Fact Sheets: Resident’s Rights*, http://www.canhr.org/RCFE/RCFE_FS_html/rcfe_resrights_fs.htm (last visited July 26, 2007); Legal Aid Bureau, Inc., *What are Your Rights As an Assisted Living Resident*, <http://www.peoples-law.org/housing/assisted-housing/assistedlivingresidentrights.htm> (last visited July 26, 2007); Department of Social Services, Adult Services and Aging: Ombudsman Program, *Assisted Living Centers: Resident’s Bill of Rights*, available at <http://dss.sd.gov/formspubs/docs/ASSTLIVING/1AssistedLivingResidentsRights.pdf>.
70. This statutory approach is an alternative to the thinking of Robert Schwemm and Michael Allen who postulate that widespread litigation is needed to educate providers and bring them into compliance with Fair Housing Laws. *See* Schwemm and Allen, *supra* note 1, at 216 (“it seems inevitable that a period of increased litigation will be needed before the industry is made fully aware of and is brought into compliance with the nation’s fair housing laws.”) Relying on litigation to bring assisted living providers into compliance ignores an important point - that, because of the time and

expense of litigation, most residents who are subjected to discrimination will “seek residence elsewhere” instead of fighting the facility provider in court. *See* Carlson, *supra* note 5, at 364. By encouraging states to incorporate fair housing language into their assisted living laws, providers will become educated and more readily comply with the Fair Housing Act. This approach allows residents to remain in the facility of their choice without engaging in protracted litigation. For those providers who choose not to comply with state assisted living law that includes fair housing language, litigation will serve as a vehicle to ensure compliance with fair housing mandates.

71. Telephone Interview with Diane Citrino, attorney, Kushner and Hamed Co, LPA, in Cleveland, Ohio (July 23, 2007); Telephone Interview with Jeffery Dillman, executive director, Housing Research and Advocacy Center, in Cleveland, Ohio (July 19, 2007); Telephone Interview with William Donaldson, long-term care ombudsman, Wisconsin, in Wis. (July 23, 2007); Telephone Interview with Debra Kroll, director—Temple University Elderly Law Project, Temple University, in Phila., Pa. (July 23, 2007); Telephone Interview with Barbara Lelli, chief field investigator, Maine Human Rights Commission, in Augusta, Me. (July 20, 2007); Telephone Interview with Pam Marshall, regional caseworker, Maine Long-Term Care Ombudsman, in Augusta, Me. (July 20, 2007); Telephone Interview with Christina McLeod, assistant director, Fair Housing Center of Washington, in Tacoma, Wash. (July 19, 2007); Pam Walz, supervising attorney, Elderly Law Project Community Legal Services of Phila., in Phila., Pa. (July 24, 2007).
72. 10-149-113 Me. Code R. §3.4 (Weil 2007); Wash. Admin. Code 388-78A-2730 (2007).
73. Wash. Admin. Code 388-78A-2730(1)(b) (2007).
74. 10-149-113 Me. Code R. §3.4.2 (Weil 2007).
75. *See* Wash. Admin. Code 388-78A-2730(1)(b) (2007).
76. *See* 10-149-113 Me. Code R. §3.4.2 (Weil 2007).
77. *See e.g.*, 55 Pa. Code §2600.42 (2007); R.I. Gen. Laws §23-17.4-16 (2007); 10-149-113 Me. Code R. §5 (Weil 2007).
78. *See* 55 Pa. Code §2600.18, §2600.42(a) (2007); R.I. Gen. Laws §23-17.4-16(a)(1) (2007).
79. The resident’s rights section, as an added safeguard, should require that residents have access to, and be given information about, the state long-term care ombudsman and other community advocates. *See e.g.*, R.I. Gen. Laws §23-17.4-16(a)(2)(xiv) (2007).
80. 55 Pa. Code §2600.41 (2007).
81. 55 Pa. Code §2600.25(c)(13) (2007).
82. *See e.g.*, 55 Pa. Code §2600.65(b)(1) (2007).
83. 55 Pa. Code §2600.65(b)(1) (2007).
84. *See supra* note 15 and 16.
85. *See supra* note 49.
86. *See supra* note 56.
87. *See supra* note 18.

Deanna Clingan-Fischer Wins National Aging & Law Award



Deanna Clingan-Fischer

Deanna Clingan-Fischer, Iowa's legal services developer, won the 2007 National Aging and Law Award. Ms. Clingan-Fischer was presented with the award at a dinner in her honor at the National Aging and Law Conference, held this year in October, in Arlington, Virginia. The award honors individuals who have made significant contributions to justice for older persons.

Specifically, award recipients demonstrate achievement in:

- Advancement of quality legal assistance for older persons,
- Establishment of principles of justice benefiting older persons,
- Promoting access to the system of justice for older persons, and
- Law, aging, or social policy on national, state, or local levels.

Ms. Clingan-Fischer, who first joined the Iowa Department of Elder Affairs in 1990, has been at her state's forefront of legal reform to protect older adults from exploitation and abuse. She has trained thousands of service providers, health care professionals, and court officials in the identification of elder abuse and the prosecution of those responsible for the abuse.

Among her most significant achievements are leading a state-wide public awareness campaign to combat elder abuse and helping to create the Office of Substitute Decision Maker, which provides decision-making services for Iowa's older adults and people with disabilities. Since the 2005 passage of Iowa's Substitute Decision-Maker Act, Ms. Clingan-Fischer has worked tirelessly to implement the act.

In addition to her efforts on behalf of older and vulnerable citizens of Iowa, Ms. Clingan-Fischer has increasingly

played a more prominent role on the national stage. She worked with the Administration on Aging and the National Association of State Units on Aging to bring greater visibility, understanding, and recognition of the role of state legal services developers. Ms. Clingan-Fischer served in elected leadership positions, including as chair, for the National Association of Legal Services Developers. In that position, Ms. Clingan-Fischer helped to develop a model job description for legal services developers and to standardize reporting forms for legal services providers.

2007 National Aging & Law Conference

The 7th Annual National Aging and Law Conference, "The Safety Net for Older Americans: What Can Be Done to Protect It?," was held this year in October, in Arlington, Virginia.

The conference provided an opportunity for lawyers and other professionals working at the nexus of law and aging across the country to come together and discuss the many issues surrounding legal problems of older persons and to hear about the latest issues and trends.

This year, there were more than 350 conference participants. Attendees represented Administration on Aging-funded and Legal Services Corporation-funded legal assistance providers, the private bar, law school faculty, state and area agencies on aging staff, social services providers, long-term care ombudsman, and state and federal legislative staff. The conference also drew directors of agencies, project coordinators, social workers, and paralegals. Most of the attendees were lawyers, of which 60 percent reported that they were in direct legal practice.

The conference drew participants from 40 states. Most attendees were from the Northeastern Atlantic states, followed by the South, Midwest, West Coast, and North Pacific. Two representatives were from Alaska and Hawaii. There were also attendees from Puerto Rico, Canada, and South Africa.

In addition to the more than 50 workshops, conference highlights included key note presentations from nationally recognized experts. Rebecca Morgan, elder law professor at Stetson University, spoke about the past, present, and future of elder law in her presentation "Elder Law in the United States: A Practice Driven by Demographics." Nancy LeaMond, from the AARP Office of Social Impact, spoke on AARP's effort towards accountability on healthcare and lifetime financial security in America. Judy Feder, professor and dean of the Georgetown Public Policy Institute, presented the

Continued on page 20

NALC 2007

Continued from page 19

Nancy Coleman Advocacy in Aging Lecture, entitled “Retirement Security: Are We Really All in It Together?” And James Perry, executive director of the Greater New Orleans Fair Housing Action Center, gave a presentation on affordable housing and housing discrimination issues plaguing the rebuilding of the Gulf Region since hurricane Katrina.

This year’s conference also included a plenary session featuring a panel of Canadian elder law experts, entitled “International Lessons: What Have Our Neighbors Done to Protect the Safety Net? The Canadian Experience.”

The National Aging and Law Conference is sponsored by the AARP Foundation, **ABA Commission on Law and Aging**, National Senior Citizens Law Center, the Center for Social Gerontology, Center for Medicare Advocacy, Inc., National Academy of Elder Law Attorneys, National Consumer Law Center, and the National Association of State Units on Aging.

Audiotapes and Podcasts from NALC Coming Soon!

Audiotapes and podcasts from some of the NALC 2007 sessions will be available soon, and at no cost from the AARP National Legal Training Project and the **ABA Commission on Law and Aging**.

The podcasts of NALC sessions are made possible by a grant to the **ABA Commission on Law and Aging** from the ABA Standing Committee on CLE’s Underserved Lawyer’s Fund. The ABA Commission was awarded a grant to create three podcasts of sessions and to make them available for free on the ABA Website.

The Underserved Lawyer’s Fund was created to provide CLE opportunities to public interest lawyers, government lawyers, solo practitioners, minority lawyers, and others for whom CLE is not readily accessible or available.

Stay tuned to the ABA Commission’s Elderbar list-serv and upcoming issues of BIFOCAL for announcements regarding their availability.

Inside the ABA/In the News

ABA Shows Solidarity with Pakistani Lawyers

On November 14, 2007, an estimated 600 to 700 lawyers marched past the U.S. Supreme Court to draw attention to their demand for an end to martial law in Pakistan, and to show their solidarity with Pakistani lawyers and judges targeted in the crackdown.

The Washington rally was organized by the American Bar Association. It was one of many held around the country since Gen. Pervez Musharraf, president of Pakistan, suspended his nation’s constitution, arrested seven Supreme Court justices, and detained thousands of Pakistani lawyers and judges.

The ABA has called on Musharraf to restore Pakistan’s constitution, reinstate the Supreme Court justices who have been detained, and free Pakistani lawyers, judges, and other civil leaders who have been wrongly arrested.

As part of its efforts to raise awareness of the threat to the rule of law in Pakistan, the ABA created an online informational toolkit titled “Constitutional Crisis in Pakistan.” The toolkit includes audio and video coverage of the march in Washington, a section offering school classroom discussion topics on Pakistan and the rule of law, selected statements and resolutions from state and local bar associations around the country, and a letter from the ABA to President Musharraf.

The ABA also created an online petition from the lawyers of America offering their support to the lawyers and citizens of Pakistan. Visitors to the ABA Web site can sign the document electronically. The petition will then be presented to the Pakistani Embassy in Washington.

Several staff from the ABA’s Washington office, including **lawyers from the ABA Commission on Law and Aging**, volunteered to help with the rally and to join with members as they marched.

For more information, and to access the ABA’s online toolkit, go to: <http://www.abanet.org/>.